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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CIPHERBLADE, LLC
(PENNSYLVANIA),

Plaintiff,

v.

23 CV 5671 (AKH)

CIPHERBLADE, LLC (ALASKA), *et*
al.

Defendants.

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New York, N.Y.
August 3, 2023
10:40 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

CROWELL & MORING LLP
Attorneys for Plaintiff
BY: JAMES K. STRONSKI
ALEXANDER J. URBELIS
RICHARD J. STELLA

STEPTOE & JOHNSON PLLC
Attorneys for Defendants
BY: MICHAEL G. SCAVELLI
JASON E. MEADE
EVAN GLASSMAN

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(Case called)

DEPUTY CLERK: State your appearances, starting with plaintiff counsel.

MS. STRONSKI: James Stronski, Crowell & Moring for CipherBlade LLC – Pennsylvania.

MR. URBELIS: Good morning, your Honor.
Alexander Urbelis from Crowell & Moring for CipherBlade LLC – Pennsylvania.

MR. STELLA: Good morning. Richard Stella for CipherBlade LLC – Pennsylvania.

MR. SCAVELLI: Good morning, Michael Scavelli from Steptoe & Johnson, for defendants.

MR. MEADE: Jason Meade from Steptoe & Johnson, for defendants.

MR. GLASSMAN: And Evan Glassman, your Honor. Good morning.

THE COURT: Everyone's present and accounted for.
If someone will tell me what I just did with my glasses.

Okay. All right. You had a meeting, and what was the result of that, Mr. Stronski?

MS. STRONSKI: Yes, your Honor. We had a meeting --

THE COURT: Take your mask off.

MS. STRONSKI: We had a meeting on the TRO relief we were seeking, and we worked hard on it. And I think we have an

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1 agreement in part. There were two issues, as your Honor will
2 recall. One is the fact that they were exerting exclusive
3 control over our data in our systems. And the other was that
4 there was confusion in the marketplace concerning whether or
5 not our expertise and our people were still affiliated with
6 them and/or the work that they had done was the work that the
7 new entity had experience in doing.

8 With respect to the first issue, your Honor, I'm happy
9 to report that at least with respect to addressing the issue of
10 immediate relief – that is the TRO – we have worked out an
11 agreement. And I could hand it up, which is not a stipulation,
12 but it's basically bullet points in terms of what we understand
13 at least the agreement to be. I spoke with counsel just now,
14 and they would like to turn it into a stipulation just to make
15 it more clear, but the access issues, we think, are resolved,
16 subject to finalization of the stipulation for submission and
17 so ordering by your Honor.

18 THE COURT: It doesn't need to be given to me, but if
19 you wish to put it on the record, that's fine.

20 MS. STRONSKI: We'd like to put the agreement on the
21 record, your Honor, because it's the basis for us
22 withdrawing --

23 THE COURT: So do the form stipulation.

24 MS. STRONSKI: Yes, your Honor.

25 THE COURT: The second point.

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1 MS. STRONSKI: The second point is access. We worked
2 hard on that, your Honor, and -- confusion, rather, in the
3 disclosure. And the thought was --

4 THE COURT: You have to be more specific. What's the
5 confusion from?

6 MS. STRONSKI: The confusion is that the licensing of
7 the trademark has changed from a prior licensee to a new
8 licensee from PA to these new entities that are defendants that
9 are using the mark now. And it's our position that the
10 business community, the law firms, others that work with these
11 companies are paying them and hiring them and thinking it's
12 them when -- us, when it's really them that's hiring. We have
13 some instances of actual confusion here that take place --

14 THE COURT: With the first stipulation, are you
15 allowed -- withdrawn.

16 In the first stipulation, can you market the mark --
17 the new --

18 MS. STRONSKI: No, your Honor. So our -- we are --
19 our client is -- our case doesn't involve a trademark claim.
20 It's not a trademark infringement claim. Our client is moving
21 to a new brand, which is called Crypto Forensics. So the
22 disclosure that -- we've agreed that to address the TRO --

23 THE COURT: So you don't care about having to exploit
24 the mark?

25 MS. STRONSKI: Yes. Right now, the mark is not

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1 something in this case that --

2 THE COURT: You just don't want them to use it?

3 MS. STRONSKI: No, your Honor. We don't want them to
4 include our clients and our client's work product and our
5 client's evidence of the work our clients did. It's very
6 much -- I mean, these are personal service businesses, like a
7 law firm, and it is like if the bankruptcy department were to
8 leave --

9 THE COURT: I need more definition.

10 MS. STRONSKI: Sure.

11 THE COURT: I don't have a good understanding. What
12 is it -- I understand what you want to do. You want to use a
13 new trade name or trademark to market your capability in crypto
14 detection. The second part is what they can't do. Now, how
15 are they using material information, trade secrets that they
16 are not supposed to use?

17 MS. STRONSKI: Well, they are using trade secret
18 information that -- and using it exclusively to compete with
19 the leads, and that's our trade secret claim. The Lanham Act
20 claim --

21 THE COURT: What is the trade secret?

22 MS. STRONSKI: The trade secret is customer
23 information, your Honor. Any business that the pricing,
24 customer status of the -- you know, if you had a law firm and
25 you had docket management and you had attorney notes in it in

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1 terms of what's been done, what needs to be done, you had work
2 product, those are trade secrets of the law firm. That's
3 confidential information that has a commercial advantage that
4 you maintain as confidential. And that's exactly what we has
5 been denied access here to these clients. And so it -- this is
6 an odd situation. Often in trade secret cases --

7 THE COURT: Let me understand. Your salespeople have
8 gone and accessed different customers, and that information is
9 in the records, and they took the records or had access to the
10 record. So I want to ask you, this is a service that you
11 provide to sizeable law firms or prominent law firms or even
12 small but successful law firms. Anybody can pick up a
13 Martindale and know who the potential clients are. What's the
14 secret?

15 MS. STRONSKI: It's not the identity of the clients.
16 It's that what they do is they track on the Internet on block
17 chain assets that have been stolen that are crypto assets.

18 THE COURT: What do the law firms have to do with
19 that?

20 MS. STRONSKI: Well, these companies act as
21 investigators and expert witnesses in litigations for law
22 firms, and so we have two aspects of our case --

23 THE COURT: Your company and the defendant's do that?

24 MS. STRONSKI: Yes. In fact, our company had done
25 it -- yes.

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1 THE COURT: So that's the nature of competition. I
2 don't understand, what is the trade secret. You still haven't
3 told me. Customers' names can't be a trade secret in this
4 industry because everybody knows them. If I want to make a
5 list of law firms in New York City, I could do so.

6 MS. STRONSKI: Right, your Honor.

7 THE COURT: Or San Francisco or Chicago or whatever.

8 MS. STRONSKI: The law firms' files, the law firms'
9 due diligence reports, the work that the law firm does, you can
10 imagine that that is confidential. It's not public. And
11 that's what we don't have access to. It's our customer
12 relationship management programs, which is our dockets and the
13 programs that hold our work product --

14 THE COURT: And now you will have access.

15 MS. STRONSKI: Now we will have access. So we
16 resolved that. The issue --

17 THE COURT: The problem is you want to stop the
18 defendants from doing this business.

19 MS. STRONSKI: Not in this TRO, your Honor. In this
20 TRO -- the only thing that remains to resolve in the TRO for
21 your Honor now is addressing the confusion in the marketplace
22 with disclosures that in the short term will reduce the amount
23 of confusion.

24 THE COURT: You want a mandatory injunction, in other
25 words.

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1 MS. STRONSKI: No. We would like that the defendants
2 make a disclosure on their website in the contact page, when
3 someone goes to contact them --

4 THE COURT: That's mandatory disclosure, mandatory
5 injunction.

6 MS. STRONSKI: It is requiring that they make a
7 disclosure.

8 THE COURT: I'm not going to give you that until you
9 win at trial. You go and compete. Your identity will be
10 known, and your distinctiveness will be known.

11 I'm only going to hear from one lawyer per side.

12 Your distinctiveness will be known, and you're using a
13 different trademark anyway. I can't see it.

14 MS. STRONSKI: Your Honor, our Lanham Act claim, we
15 have addressed our access claim, our trade secret claim at
16 least on the TRO relief, so it's the Lanham Act. It's the
17 confusion. We have instances of customers who are confused.
18 We cannot --

19 THE COURT: But it's not going to continue because
20 you're going to have a new trademark. You're using a new name,
21 so it won't continue. And what's past it past. You can sue
22 for damages. I don't see it. I don't see it as a TRO. First,
23 it's a mandatory injunction, and the standards are really high
24 for a mandatory injunction. And secondly, it's -- it doesn't
25 do anything for the future because you have a different name

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1 anyhow. And third, you're not irreparably injured. You can
2 sue for damages. If they used material they should not have
3 used to gain revenue they shouldn't have gotten, you can
4 recover it.

5 MS. STRONSKI: Your Honor, I understand your -- the
6 mandatory injunction concern. The problem here is that on the
7 Lanham Act, there is confusion presently, and it is appropriate
8 for an injunction to limit confusion because confusion creates
9 irreparable harm. It damages the relationships and --

10 THE COURT: Once you have access to your information,
11 which you got, and once you decide to use a different name to
12 distinguish yourself, there's no likelihood of confusion in the
13 future. Injunctions run into the future.

14 The motion for TRO is denied.

15 MS. STRONSKI: Your Honor, the TRO, if I might add
16 something, is --

17 THE COURT: Subject to the completion of the
18 stipulation discussed today.

19 MS. STRONSKI: Okay. And, your Honor, the stipulation
20 may still include a disclosure, which we're discussing with the
21 defendants.

22 THE COURT: Whatever you agree on is all right with
23 me.

24 MS. STRONSKI: Right. One of the concerns, your
25 Honor --

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1 THE COURT: As long as you don't agree to exclude
2 others, then I wouldn't agree.

3 MS. STRONSKI: I'm sorry, your Honor?

4 THE COURT: As long as you don't agree to exclude
5 other companies.

6 MS. STRONSKI: Right.

7 THE COURT: It's just between the two of you.

8 MS. STRONSKI: Right, right.

9 THE COURT: I'll sign whatever you agree to.

10 MS. STRONSKI: So, your Honor, the stipulation that
11 we've been discussing includes, again, the two points. We
12 don't agree on the last point yet, but the first point, access,
13 I believe we do. And the last point is a disclosure to address
14 irreparable harm.

15 Let me just let your Honor know that there are
16 statements being made to our customers that are false and/or
17 misleading, and that is causing the confusion that we wanted to
18 address in this disclosure injunction. And --

19 THE COURT: You want them to stop doing something?

20 MS. STRONSKI: We want them to --

21 THE COURT: What is it you want them to stop doing?

22 MS. STRONSKI: We want them to stop saying that
23 CipherBlade separated from the Pennsylvania unit due to
24 increasingly erratic and unconscionable behavior by
25 representatives of the same, including threats of violence and

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1 other harm to multiple team members of other CipherBlade
2 companies. This is a statement that --

3 THE COURT: Stop. What's your position on that,
4 Mr. Scavelli?

5 MR. SCAVELLI: Your Honor, our position on that is
6 that that is accurate. And I would read the rest of what
7 Mr. Stronski was reading.

8 The next paragraph says: If you'd like to reach out
9 to CipherBlade - Pennsylvania and Paul Sibenik, here is his
10 e-mail again.

11 THE COURT: Say that again.

12 MR. SCAVELLI: Of course, your Honor. So just two
13 points.

14 First of all, our client stands by what was said
15 there, and I think the evidence will show that that is
16 accurate.

17 And second of all, the rest of that e-mail, which
18 totally contradicts with what Mr. Stronski is saying, is that
19 it is -- it says -- I'll read it.

20 THE COURT: Go ahead.

21 MR. SCAVELLI: As your contact is with CipherBlade LLC
22 in Pennsylvania, and Paul Sibenik, who works by that company's
23 team, and has been working on your case, he should continue to
24 do so. We can only point you to Paul's private e-mail address
25 as a contact point at this moment. And they provide

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1 Mr. Sibenik's e-mail address.

2 THE COURT: Is Paul Sibenik?

3 MR. SCAVELLI: Sibenik.

4 THE COURT: Is he now working for you?

5 MS. STRONSKI: He is, your Honor. He is. But the
6 point is, again --

7 THE COURT: I don't think you can keep saying that.
8 That is unfair competition. To name-call your competitor and
9 to set it up where the former employee of a competitor is
10 supposed to get business by your advocacy without knowing that
11 business is coming to you.

12 MR. SCAVELLI: Your Honor, I don't disagree with that,
13 and I expect --

14 THE COURT: And you should put it in the same
15 stipulation.

16 MR. SCAVELLI: To be clear, the stipulation also
17 includes a provision where all e-mails that are sent to the
18 CipherBlade e-mails for these individuals are going to be
19 forwarded to their new e-mail address.

20 THE COURT: The same day?

21 MR. SCAVELLI: Yes, your Honor. And I believe it's
22 instantaneous, but close to it.

23 THE COURT: So with that, do you have the relief
24 you're looking for?

25 MS. STRONSKI: Yes, your Honor. If they are

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1 prohibited. I have another instance where they said the same
2 thing to a lawyer whose offices are at 745 5th Avenue, who is a
3 client. So, yes, if they've stop doing that, your Honor --

4 THE COURT: What is that sentence now?

5 MS. STRONSKI: Again, it is a regret that CipherBlade
6 has had to separate from its Pennsylvania unit comprising
7 Richard Paul and Sasha due to increasingly erratic and
8 unconscionable behavior --

9 THE COURT: You can't say that either, Mr. Scavelli.

10 MR. SCAVELLI: Your Honor, fair enough. I think this
11 was a very heated time, and there were things, just to be fair,
12 that were said to my clients that caused them to say this. But
13 I don't disagree with your Honor. We're not going to fight the
14 point.

15 THE COURT: We're going to stop, then.

16 Now, it is permissible for an employee who leaves one
17 company to become affiliated or employed by a competitor
18 company, to come in touch with the clients he served, and to
19 tell them that he's moved, and to invite them to continue his
20 services. There's nothing wrong with that.

21 MS. STRONSKI: Your Honor, also -- and I think they
22 are going to try to fix this, but their website includes many
23 instances of still claiming our client's work product and
24 experiencing clients as their own --

25 MR. SCAVELLI: Yes. Mr. Stronski, I'm sorry to

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1 interrupt you. We absolutely agreed we would do that.

2 THE COURT: Do what?

3 MR. SCAVELLI: We will remove references to their
4 clients' name on the website. We have already started to do
5 that, and we agreed to do that a week ago.

6 THE COURT: Look, I think your stipulation can cover
7 all this.

8 MS. STRONSKI: I think so, your Honor. If we have --

9 THE COURT: I'll give you another date just as a way
10 of keeping on the case, but I think you got it all wrapped up,
11 and start paying attention to the motion to dismiss for lack of
12 personal jurisdiction.

13 MS. STRONSKI: Your Honor, one other issue, and I
14 haven't raised this with counsel yet, but they filed last night
15 late a motion to dismiss.

16 THE COURT: That's a jurisdictional motion?

17 MS. STRONSKI: They did more than that. They filed a
18 subject matter jurisdiction dismissal on the defendant trade
19 secret, venue dismissal, and other grounds. So it's more than
20 was contemplated in the expedited motion, and we would ask if
21 we could get another week to respond to it. We think it will
22 ultimately be denied, and I'd like to address that.

23 THE COURT: I'm going to fix a date for you. Let's do
24 one at a time. Well, if a motion is coming on, I will see you
25 at the hearing of the motion, so I don't need a new date. If

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1 Mr. Stronski is aggrieved, he can call my chambers and can get
2 fast access to me.

3 All right. So when do you want to oppose the motion?

4 MS. STRONSKI: Your Honor, I think when it was only a
5 personal jurisdiction motion, you set it at one week.

6 THE COURT: The motion is as it is.

7 MS. STRONSKI: And as it is now, we would like
8 three weeks.

9 THE COURT: Three weeks, so by August 24.

10 There will be no adjournment of the schedule, so make
11 sure you will be able to live by it. August 24.

12 MR. SCAVELLI: No objection from us, your Honor. And
13 we would request, if we could have two weeks for a reply.

14 THE COURT: Let me first fix the --

15 MR. SCAVELLI: Yes, your Honor.

16 MS. STRONSKI: We can submit our papers on the 24th.

17 THE COURT: Okay. And two weeks to reply?

18 MR. SCAVELLI: If that would be all right, your Honor.

19 THE COURT: Pardon?

20 MR. SCAVELLI: If that's okay, yes, your Honor.

21 THE COURT: I think so.

22 September 7 to reply. And I'll fix a hearing date
23 when I get the papers. Okay?

24 MS. STRONSKI: Thank you, your Honor.

25 MR. SCAVELLI: Your Honor, can we just -- while we're

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1 all here, just discuss whether or not -- it's our position we
2 should just brief this issue first.

3 THE COURT: Which issue?

4 MR. SCAVELLI: The personal jurisdiction issue, the
5 motion that's before the Court.

6 THE COURT: You made a motion?

7 MR. SCAVELLI: Yes.

8 THE COURT: I take the motion.

9 MR. SCAVELLI: Yes, your Honor.

10 THE COURT: Do whatever you need to take the motion.
11 I'm not going to hear the same motion again.

12 MR. SCAVELLI: Of course.

13 THE COURT: If there's a problem, subject matter
14 jurisdiction, that's the most important thing to do. I have to
15 deal with that immediately.

16 MR. SCAVELLI: Your Honor, there remains, I think, two
17 other kind of briefings that need to take place, which is I
18 believe some of the TRO/preliminary injunction motion that they
19 have brought is still live.

20 THE COURT: What is live?

21 MR. SCAVELLI: They --

22 THE COURT: I was going to deny it except as the
23 parties agree in a stipulation.

24 MS. STRONSKI: Right, your Honor. We're still, as I
25 understand it, discussing potential resolutions, or at least

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1 planning to discuss resolutions of other issues. It relates to
2 control of the domain that was stolen, and it's -- you know,
3 and it also -- with respect to -- there's over a million
4 dollars that's been taken out of our accounts in New York.

5 And --

6 THE COURT: Those are not matters for a TRO.

7 MS. STRONSKI: Right. But in terms of provisional
8 remedy, because we have these entities outside the U.S. that we
9 don't know what assets they have here, we'd like to perhaps get
10 restraining orders. We have to discuss all those --

11 THE COURT: You're not going to get that in a TRO.

12 MS. STRONSKI: It would be in a PI, your Honor.

13 THE COURT: A separate motion.

14 MS. STRONSKI: Yes, your Honor, okay.

15 THE COURT: The motion for TRO and for a preliminary
16 injunction is denied, except to the extent that the parties
17 have agreed -- will agree -- sorry, they have agreed and will
18 continue to agree in the context of a stipulation to be given
19 to me, by when?

20 MS. STRONSKI: We don't have a date, your Honor. It
21 would be helpful to have one.

22 THE COURT: Give me a date.

23 (Counsel confer)

24 MS. STRONSKI: I think we can do it before Monday, but
25 Monday, given that we have clients outside the country.

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1 THE COURT: By August 8. By August 8.

2 MS. STRONSKI: Okay.

3 THE COURT: So the motion, plaintiff's motion for a
4 TRO and a preliminary injunction is denied, except to the
5 extent that the parties agree in a stipulation to be tendered
6 to me for a signature no later than August 8, 2023.

7 MS. STRONSKI: Your Honor, just for the record, it's
8 denied based on the representations that we've come to an
9 agreement, and we're going to submit a stipulation; is that
10 correct?

11 THE COURT: That's what I said. Would you like the
12 reporter to reread what I said?

13 MS. STRONSKI: No. Okay.

14 THE COURT: Do you want the reporter to reread it?

15 MS. STRONSKI: No. I just didn't hear it properly,
16 I'm sure. Thank you.

17 MR. SCAVELLI: Your Honor, may I ask one last
18 question? With respect to our -- we also intend to file a
19 12(b)(6) motion. I assume we hold that off until we resolve
20 the jurisdictional side.

21 THE COURT: I think you should make all motions at one
22 time. I don't want forever to be dealing with motions. If you
23 win on the personal jurisdiction or the subject matter
24 jurisdiction, you've won. And then if you lose, you want to
25 come back with another motion, no. All motions at the same

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1 time, so that may change the schedule.

2 MR. SCAVELLI: Well, we have already filed the
3 personal jurisdiction motion, your Honor. That's the issue.
4 Otherwise, we would have -- you had asked us to file that at
5 first.

6 THE COURT: I won't entertain another motion. The
7 rule is to consolidate all motions. You want to make a
8 12(b)(6), make it.

9 How do you feel about that, Mr. Stronski? Do you want
10 all the motions at one time, or would you rather take them by
11 jurisdiction first and substance second?

12 MS. STRONSKI: I have no strong preference, your
13 Honor.

14 MR. SCAVELLI: Your Honor, it would be our preference
15 to take it in sequence. We think the 12(b)(6) motion would be
16 a lot of work.

17 THE COURT: We will do it in sequence. The motion you
18 have is the motion we'll deal with. There will be no
19 counter motions. And we have a schedule. Opposition is by
20 August 24, reply by September 7. And then I'll fix a date
21 for -- we'll have a conference for further activities in the
22 case. There will be no discovery until this is concluded.

23 MS. STRONSKI: Your Honor, and we have not submitted
24 our opposition yet, but on the personal jurisdiction motion, we
25 might need discovery, but we'll raise that issue at that time.

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1 THE COURT: You raise the issue. I have not read
2 Mr. Scavelli's papers, so I don't know what they say.

3 MS. STRONSKI: Your Honor, just to clarify. We -- by
4 order to show cause, we sought the scheduling of a PI motion
5 and a TRO. We've only been dealing with the TRO. So if we
6 later need on developments --

7 THE COURT: You can file it again.

8 MS. STRONSKI: We can file it again. Thank you.

9 THE COURT: Make a motion as new facts develop.

10 MS. STRONSKI: Thank you.

11 THE COURT: I have to say one thing. The news these
12 past couple of weeks has disclosed that a large number of
13 lawyers from Stroock & Stroock & Lavan have come to Steptoe,
14 including some lawyers with whom I worked very closely when I
15 was a partner of the firm, particularly Michelle Jacobson and I
16 think Robert Lewin has joined your firm also. Has he not?
17 There may be others. We were a close partnership, so there
18 might be others. It will not affect my handling of this case.

19 I used to enjoy a pension from
20 Stroock & Stroock & Lavan, which sadly is terminating. So I
21 have no financial interest indirectly as well.

22 And I will record this in a letter that I will send
23 afterwards. If anyone has an objection, that person can
24 register the objection with the clerk.

25 MS. STRONSKI: Thank you, your Honor.

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1 MR. SCAVELLI: Thank you, your Honor.

2 THE COURT: All right. We're finished. Thanks,
3 everyone.

4 (Adjourned)

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